

# HOUSE . . . . . No. 834

By Mr. Carron of Southbridge, petition of Mark J. Carron and others relative to “parenting plans” in certain divorce proceedings in the Probate Court. The Judiciary.

## The Commonwealth of Massachusetts

### PETITION OF:

Mark J. Carron	Shirley Gomes
Jay R. Kaufman	Richard T. Moore
Michael J. Rodrigues	Christine E. Canavan
Cory Atkins	Stephen P. LeDuc
Michael E. Festa	Kathleen M. Teahan
John W. Scibak	Brian Knuuttila

In the Year Two Thousand and Five.

AN ACT RELATIVE TO RESPONSIBLE PARENTHOOD.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

- 1 Chapter 208 of the General Laws is hereby amended by striking
- 2 out section 31, as appearing in the 1998 Official Edition as
- 3 amended, and inserting in place thereof the following section:
- 4 Section 31. For the purposes of this section, the following
- 5 words shall have the following meaning unless the context
- 6 requires otherwise:
- 7 “Parenting Plan,” an implementation plan using a parenting
- 8 plan format, setting forth the details of shared or sole legal and
- 9 physical custody including, but not limited to, the child’s educa-
- 10 tion; the child’s health care; procedures for resolving disputes
- 11 between the parties with respect to child-raising and duties; and
- 12 the periods of time during which the child shall reside with each
- 13 parent, including holidays and vacations, or the procedure by
- 14 which such periods of time shall be determined.

15 “Shared legal custody,” continued mutual responsibility and  
16 involvement by both parents in major decisions regarding the  
17 child’s welfare including matters of education, medical care and  
18 emotional, moral and religious development.

19 “Shared physical custody,” a child shall reside equally with and  
20 be under the supervision of each parent for specified periods of  
21 time; provided, however, that parenting time shall be shared by  
22 the parents in such a way as to assure a child frequent and con-  
23 tinued contact with both parents. Factors to be considered in  
24 determining the specific periods of time each child shall reside  
25 with a parent shall include:

26 a. the educational, medical, health, and social needs and activi-  
27 ties of the child;

28 b. the geographic location of each parent’s residence and  
29 resulting proximity to the child’s school, medical and health care,  
30 extracurricular activities and other such matters concerning the  
31 child;

32 c. the child’s age and well being especially as concerns  
33 spending an entire school vacation week and entire summer month  
34 with each parent, or alternative arrangements predicated upon the  
35 child’s age and circumstances.

36 “Parenting time,” shall refer to the time either parent physically  
37 spends with the child, regardless of custodial status.

38 “Sole legal custody,” one parent shall have the right and  
39 responsibility to make major decisions regarding the child’s wel-  
40 fare including matters of education, medical care and emotional,  
41 moral and religious development.

42 “Sole physical custody,” a child shall reside with and be under  
43 the supervision of one parent, subject to reasonable parenting time  
44 by the other parent, unless the court determines that such par-  
45 enting time would not be in the best interest of the child.

46 There shall be a rebuttable presumption that shared legal and  
47 shared physical custody is in every child’s best interest. In making  
48 an order or judgment relative to the legal and physical custody of  
49 children, the rights of the parents, in the absence of misconduct or  
50 disinterest of a parent, are equal, and the best interests of the chil-  
51 dren shall determine their custody. When considering the best  
52 interests of the child, the court shall consider each parent’s respec-  
53 tive past, present, and future contribution to the health, welfare,

54 well-being, raising, nurturing and loving of the child, and whether  
55 or not the child's present or past living conditions positively or  
56 adversely affect his physical, mental, moral or emotional health,  
57 and which parent facilitates and encourages a close and continuing  
58 parental relationship between the child and the other parent.

59 Upon the filing of an action in accordance with the provisions  
60 of this section, or section 28 of this chapter, or section 32 of  
61 chapter 209 and until a judgment on the merits is rendered, absent  
62 emergency conditions, abuse or neglect, the parents shall have  
63 temporary shared legal and temporary shared physical custody of  
64 each minor child of the parents; provided, however, that the judge  
65 may enter an order for temporary sole legal or sole physical cus-  
66 tody for one parent if the court makes specific, written findings  
67 that such shared physical and legal custody would not be in the  
68 best interest of the child.

69 In determining whether temporary shared legal and temporary  
70 shared physical custody would not be in the best interest of the  
71 child, the court shall consider all relevant facts including, but not  
72 limited to, whether any member of the family has been the perpe-  
73 trator of domestic violence, abuses alcohol or other drugs or has  
74 deserted the child.

75 If the court finds evidence of abuse, neglect or domestic vio-  
76 lence as defined by section 31A of chapter 208, or section 38 of  
77 chapter 209, or section 3 of chapter 209A, or section 10 of chapter  
78 209C, and issues a temporary or permanent custody order which  
79 does not grant shared physical and legal custody, the court shall  
80 enter specific, written findings of fact as to the effects of the  
81 abuse on the child, which findings demonstrate that such order is  
82 in the furtherance of the child's best interests and provides for the  
83 safety and well-being of the child.

84 If the issue of custody is contested and either party seeks sole  
85 legal or sole physical custody, the burden of proof, by clear and  
86 convincing evidence, shall be on the moving party that such a cus-  
87 todial arrangement would be in the best interest of the child and  
88 the court shall make specific, written findings to support any sole  
89 custody order.

90 The parties, jointly or individually, shall submit to the court at  
91 the custody hearing and trial or other disposition of the action, a  
92 Parenting Plan.

93 The court shall review the parties' completed Parenting Plan as  
94 submitted and agreed upon by both parties, and shall enter an  
95 Order or Judgment substantially in accord therewith unless spe-  
96 cific, written findings are made by the court indicating that such  
97 an Order or Judgment would not be in the best interests of the  
98 children.

99 In the event that a Parenting Plan cannot be agreed upon by the  
100 parties, the court may require that the parties engage in alternate  
101 dispute resolution in order to draft a Parenting Plan, which is in  
102 the best interest of the child. If after participating in alternate dis-  
103 pute resolution the parties remain unable to agree upon a Par-  
104 enting Plan, the parties shall so notify the court, and the court  
105 shall thereupon make the determinations as to physical and legal  
106 custody of the children including that the court may but is not  
107 obligated to incorporate parts of one parent's or both parents' pro-  
108 posed Parenting Plan in its Orders and Judgment. A Parenting  
109 Plan issued or accepted by the court shall become part of the judg-  
110 ment in the action, together with any other appropriate Orders  
111 including as regards the responsibility of the parties for the sup-  
112 port of the child.

113 The entry of an order of judgment relative to the custody of  
114 minor children shall not negate or impede the ability of either  
115 parent to have access to the academic, medical, hospital or other  
116 health records of the child; except, that if a court has issued an  
117 order prohibiting a parent from imposing any restraint upon the  
118 personal liberty of the other parent or if nondisclosure of the pre-  
119 sent or prior address of the child or a party is necessary to ensure  
120 the health, safety or welfare of such child or party, the court may  
121 order that any part of such record pertaining to such address shall  
122 not be disclosed to such parent.